

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

-----X	
RACHEL WITLIEB BERNSTEIN,	:
ANDREA MACKRIS, and REBECCA	:
GOMEZ DIAMOND,	:
	:
Plaintiffs,	:
	:
	:
v.	:
	:
BILL O'REILLY and	:
FOX NEWS NETWORK LLC,	:
	:
Defendants.	:
-----X	

Index No.: cv-17-9483

**FIRST AMENDED COMPLAINT**

Plaintiffs, **RACHEL WITLIEB BERNSTEIN, ANDREA MACKRIS and REBECCA GOMEZ DIAMOND**, through their attorneys, Smith Mullin, P.C., allege as follows:

**PRELIMINARY STATEMENT**

1. This is a civil action by the plaintiffs, Rachel Witlieb Bernstein, Andrea Mackris and Rebecca Gomez Diamond ("Plaintiffs" or "Ms. Bernstein," "Ms. Mackris," or "Ms. Diamond"), against defendants Bill O'Reilly ("Defendant" or "O'Reilly") and Fox News Network LLC ("Defendant" or "Fox News"). All plaintiffs sue for defamation. Plaintiff Bernstein has additional claims for breach of contract, breach of the covenant of good faith and fair dealing, and tortious interference.

**THE PARTIES**

2. Plaintiff, Rachel Witlieb Bernstein, is a resident and citizen of California.
3. Plaintiff, Andrea Mackris, is a resident and citizen of Missouri.

4. Plaintiff, Rebecca Gomez Diamond, is a resident and citizen of New Jersey.

5. Defendant Bill O'Reilly is a citizen of New York State residing in Long Island.

6. Fox News is a cable television news and entertainment company that operates, among other things, the Fox News Network, Fox Business News, Foxnews.com and, until recently, Fox News Latino.

7. Fox News maintains its principal place of business in New York, New York, where the acts complained of occurred.

### **JURISDICTION**

8. This Court has diversity jurisdiction over this action pursuant to 28 *U.S.C.* § 1332 in that the plaintiffs' citizenship is completely diverse from that of the defendants and the matter in controversy exceeds the sum of \$75,000.00 exclusive of interest and costs.

### **VENUE**

9. Venue is proper in this District under 28 *U.S.C.* § 1391(b)(2) because defendant Fox News is based in New York City, defendant Bill O'Reilly lives in Long Island, New York, and the actions complained about herewith were authorized by Fox News Network in New York. Additionally, with regard to plaintiff Rachel Witlieb Bernstein, the contract at issue was entered in New York City, the contract provides that New York law applies, and the conduct at issue took place in New York City.

**COUNT ONE**

**(RELEVANT FACTS AS TO ALL PLAINTIFFS AND BREACH OF  
OF CONTRACT AS TO PLAINTIFF RACHEL WITLIEB BERNSTEIN)**

**A. Rachel Witlieb Bernstein**

10. In July of 2002, plaintiff Rachel Witlieb Bernstein entered into a Settlement Agreement and Release releasing Fox News and Bill O'Reilly of all claims, including claims of discrimination. The Agreement provides as follows:

5(f) Non-Disparagement: Witlieb and Fox each agree not to disparage, trade libel, or otherwise defame each other, and in the case of Fox, Witlieb agrees not to disparage, trade libel, or otherwise defame its officers or employees, including without limitation, Bill O'Reilly. In the case of Witlieb, for purposes of this Paragraph 5(e), the term "Fox" shall mean the released parties referenced in Paragraph 4(a) above, including Bill O'Reilly, and said released parties agree not to disparage, trade libel, or otherwise defame Witlieb.

11. The Agreement further provides:

Confidentiality: Wittlieb (sic) and Fox, and their respective legal counsel, and any other person acting on Wittlieb (sic) or Fox's behalf, or through either of them, shall not disclose to any person the contents of this Agreement or the facts or allegations that gave rise to this Agreement. If asked, each of Wittlieb (sic) and Fox and their respective legal counsel may say only 'The matter has been resolved (or settled)', without elaboration. Notwithstanding the foregoing, however, Wittlieb (sic) and Fox, and their respective counsel, shall not be prohibited from making such disclosures of these matters to any person who has a legal necessity to know (as, for example, in the case of a valid subpoena) and to their respective accountants, and in Wittlieb's (sic) case, to her immediate family, but in each such instance Fox and Wittlieb (sic) shall specifically make best efforts to prevent those persons from repeating those disclosures to any other person. Either Wittlieb

(sic) or Fox's breach of this provision shall constitute a material breach of this Agreement.

12. Plaintiff Bernstein has in no way violated any of the provisions of the respective Settlement Agreement.

13. On April 1, 2017, The New York Times reported that "Bill O'Reilly Thrives at Fox News, Even as Harassment Settlements Add Up." The article by Emily Steel and Michael S. Schmidt revealed that defendant O'Reilly and/or defendant Fox News had paid five women about \$13 million to forego litigation and never speak about what O'Reilly did to them. The article specifically mentioned plaintiff Bernstein by name:

Fox News has been aware of complaints about inappropriate behavior by Mr. O'Reilly since at least 2002, when Mr. O'Reilly stormed into the news room and screamed at a young producer, according to current and former employees, some of whom witnessed the incident.

Shortly thereafter, the woman, Rachel Witlieb Bernstein, left the network with a payout and bound by a confidentiality agreement, people familiar with the deal said. The exact amount she was paid is not known, but it was far less than the other settlements. The case did not involve sexual harassment.

14. Ms. Bernstein was not the source of the information printed in The New York Times.

**B. Andrea Mackris**

15. Plaintiff Andrea Mackris was also specifically named as a Fox News employee who had made claims of sexual harassment against Bill O'Reilly and settled those claims. Regarding plaintiff Mackris The New York Times reported:

Two years later, allegations about Mr. O'Reilly entered the public arena in lurid fashion when a producer on his show,

Andrea Mackris, then 33, filed a sexual harassment lawsuit against him. In the suit, she said he had told her to buy a vibrator, called her at times when it sounded as if he was masturbating and described sexual fantasies involving her. Ms. Mackris had recorded some of the conversations, people familiar with the case said.

Ms. Mackris also said in the suit that Mr. O'Reilly, who was married at the time (he and his wife divorced in 2011), threatened her, saying he would make any woman who complained about this behavior "pay so dearly that she'll wish she'd never been born."

Fox News and Mr. O'Reilly adopted an aggressive strategy that served as a stark warning of what could happen to women if they came forward with complaints, current and former employees told The Times.

Before Ms. Mackris even filed suit, Fox News and Mr. O'Reilly surprised her with a pre-emptive suit of their own, asserting she was seeking to extort \$60 million in return for not going public with "scandalous and scurrilous" claims about him.

"This is the single most evil thing I have ever experienced, and I have seen a lot," he said on his show the day both suits were filed. "But these people picked the wrong guy."

A public relations firm was hired to help shape the narrative in Mr. O'Reilly's favor, and the private investigator Bo Dietl was retained to dig up information on Ms. Mackris. The goal was to depict her as a promiscuous woman, deeply in debt, who was trying to shake down Mr. O'Reilly, according to people briefed on the strategy. Several unflattering stories about her appeared in the tabloids.

After two weeks of sensational headlines, the two sides settled, and Mr. O'Reilly agreed to pay Ms. Mackris about \$9 million, according to people briefed on the agreement.

16. Ms. Mackris was not the source of the information about her claims against O'Reilly or the settlement of those claims as reported in The New York Times.

**C. Rebecca Gomez Diamond**

17. Plaintiff Rebecca Gomez Diamond was also specifically named in the April 1, 2017 New York Times story which stated:

In 2011, Rebecca Gomez Diamond, who had hosted a show on the Fox Business Network - also supervised by Mr. Ailes - was told the network was not renewing her contract. Similar to Ms. Mackris, she had recorded conversations with Mr. O'Reilly, according to people familiar with the case. Armed with the recordings, her lawyers went to the company and outlined her complaints against him.

Ms. Diamond left the network, bound by a confidentiality agreement, and Mr. O'Reilly paid the settlement, two of the people said. The exact amount of the payout is not known.

18. Plaintiff Diamond was not the source of the information printed in The New York Times.

**D. Defendants' Disparaging and Defamatory Statements**

19. In the April 1, 2017 New York Times article, Mr. O'Reilly violated the non-disparagement clause in Ms. Bernstein's settlement agreement and defamed all three plaintiffs (members of a small identifiable group), by stating:

Just like other prominent and controversial people, I'm vulnerable to lawsuits from individuals who want me to pay them to avoid negative publicity. In my more than 20 years at Fox News Channel, no one has ever filed a complaint about me with the Human Resources Department, even on the anonymous hotline.

\* \* \*

The worst part of my job is being a target for those who would harm me and my employer, the Fox News Channel.

20. O'Reilly continued his disparagement of Ms. Bernstein and his defamation of the three plaintiffs (members of a small identifiable group) in a statement published on O'Reilly's website and published by The Hollywood Reporter on April 21, 2017. Defendant O'Reilly stated:

But most importantly, I'm a father who cares deeply for my children and who would do anything to avoid hurting them in any way. And so I have put to rest any controversies to spare my children.

The worst part of my job is being a target for those who would harm me and my employer, the Fox News Channel. Those of us in the arena are constantly at risk, as are our families and children. My primary efforts will continue to be to put forth an honest TV program and to protect those close to me.

21. These statements also were published in whole or in part by numerous media outlets including, but not limited to, Newsweek, the Washington Post, NBCnews.com, New York Magazine, Money Magazine, CNN.com, CNBC.com, Vanity Fair, the LA Times, the Washington Examiner, Huffington Post, and the Chicago Tribune. These statements were published to millions of people.

22. Defendant Fox News published a statement through its parent company, 21<sup>st</sup> Century Fox, defending defendants O'Reilly and Fox on April 1, 2017, the same date The New York Times story exposing O'Reilly's years of abuse of women was published:

Notwithstanding the fact that no current or former Fox News employee ever took advantage of the 21<sup>st</sup> Century Fox hotline to raise a concern about Bill O'Reilly, even anonymously, we have looked into these matters over the last few months and discussed them with Mr. O'Reilly. While he denies the merits of these claims, Mr. O'Reilly has resolved those he regarded as his personal responsibility. Mr. O'Reilly is fully committed to

supporting our efforts to improve the environment for all our employees at Fox News.

23. In repeating that defendant O'Reilly denied the merits of the claims of those named in the article in the The New York Times, defendant Fox News defamed plaintiffs. In fact, plaintiffs Mackris and Diamond had irrefutable proof showing that O'Reilly sexually harassed them - evidence of which Fox News was well aware when making the statement in Paragraph 22. Defendant Fox also knew that numerous witnesses saw O'Reilly abuse and mistreat Ms. Bernstein.

24. Defendants Fox News and O'Reilly disparaged and defamed the plaintiffs by falsely claiming that they did not complain to the company about O'Reilly's illegal actions. Of course they complained. Plaintiffs did complain internally to Fox News in a timely manner. They all settled their complaints. In the Settlement Agreements, Fox and O'Reilly demanded plaintiffs' silence about O'Reilly's harassment and mistreatment.

25. Contrary to defendants' false statements, Ms. Bernstein repeatedly complained to Fox Human Resources, Bill Shine, and other Fox executives about O'Reilly's mistreatment. As defendants know, there was no "hotline" when plaintiff Bernstein was employed. 21<sup>st</sup> Century Fox was not the parent company of Fox News until 2013.

26. Defendant Fox News did not have clear mechanisms to report sexual harassment and many employees, including Suzanne Scott, President of Programming, were not aware of any hotline until recent years, and certainly not a 21<sup>st</sup> Century Fox hotline prior to 2013, if then.



27. Contrary to defendants' false statements, plaintiff Mackris complained through her lawyer to Fox News VP of Legal Dianne Brandi about O'Reilly's harassment. No investigation was conducted. Instead, after smearing Ms. Mackris in the press and frightening her with surveillance and bullying, defendant Fox News settled Ms. Mackris's legal claims with the stipulation that she remain silent about O'Reilly's harassment and leave Fox News. Defendant Fox News continued to employ O'Reilly knowing that he harassed and abused women.

28. Plaintiff Diamond complained through her lawyer to Fox News VP of Legal Dianne Brandi about O'Reilly's harassment. No investigation was conducted. Instead, Fox News settled Ms. Diamond's legal claims with the stipulation that she remain silent about O'Reilly's harassment and leave Fox News. Defendant Fox News continued to employ O'Reilly knowing that he harassed and abused women.

29. The policy manual at Fox News provides that complaints can be brought to the legal department (Dianne Brandi during all relevant times).

30. By making the repeated false statements that none of the plaintiffs (members of a small identifiable group) complained, defendants disparaged and defamed them, portraying them as liars and extortionists who have concocted complaints and never gave the company the opportunity to investigate them in a timely way. In fact, defendant Fox News chose to get rid of women who complained about sexual harassment and insist on their silence while continuing to employ defendant O'Reilly, allowing him to continue his harassment and abuse of female Fox employees.

31. Defendants' false statements that none of the plaintiffs complained was published by numerous news outlets throughout the country making it available to millions of people.

32. In the statements above, defendant O'Reilly portrayed himself as a "target" and claimed that complaints against him are extortionate. This is false. In fact, he is a serial abuser and plaintiffs' complaints about him were far from extortionate.

33. Defendant O'Reilly was employed by Fox News when he breached the non-disparagement and confidentiality clauses of Ms. Bernstein's Settlement Agreement.

34. Defendants Fox and O'Reilly materially breached the Agreement by making statements other than the agreed-upon statement and by issuing false, disparaging and defamatory statements.

35. Defendants knew that plaintiff Bernstein was forced by defendants to sign the non-disparagement and confidentiality clauses and would be afraid to answer defendants' false, disparaging and defamatory statements.

36. Defendant Fox News participated in and authorized its employee Bill O'Reilly to breach the contract by disparaging Ms. Bernstein.

37. Defendant Fox News participated in and authorized its employee Bill O'Reilly to defame plaintiffs Ms. Bernstein, Ms. Mackris and Ms. Diamond.

38. Defendant Fox News breached its agreement with plaintiff Bernstein in making a statement other than the statement specifically stipulated in her settlement agreement.

39. Fox News breached its contract with plaintiff Bernstein by allowing and authorizing its employee Bill O'Reilly to disparage and defame Ms. Bernstein and to make statements other than those to which the parties agreed.

40. On September 13, 2017, defendant Bill O'Reilly again falsely stated to The Hollywood Reporter that "no one was mistreated on my watch." This statement falsely portrayed the three named plaintiffs (the small group identified in the April 1, 2017 New York Times article) as liars.

41. Also on September 13, 2017, defendant O'Reilly stated to The Hollywood Reporter that "once you get a famous name, and once you're in the political arena, the combination is devastating. If they can get you, they're going to get you." O'Reilly presented himself as a victim of a vast conspiracy and not a serial abuser and coward hiding behind the non-disclosure agreements he forced his victims to sign.

42. O'Reilly portrayed the small group of abused women identified in the April 1, 2017 New York Times article, including the three plaintiffs, in a false light, defamed and disparaged their character, calling into question their motives for objecting to O'Reilly's abuse and ultimately being forced out at Fox News with a Settlement Agreement.

43. On October 21, 2017, Emily Steel and Michael Schmidt revealed in another New York Times article that in January 2017, defendant O'Reilly paid Fox News analyst Lis Wiehl \$32 million in exchange for a release of claims of repeated harassment, a non-consensual sexual relationship, and receiving unwanted pornographic e-mails or texts. The article stated that the settlement required Ms. Wiehl to sign a non-disclosure agreement and to destroy communications between O'Reilly and Wiehl.

44. The New York Times also reported that in February 2017, one month after O'Reilly agreed to pay Ms. Wiehl \$32 million in exchange for a Release of claims against him and the company, Fox News, aware of the settlement, signed a four year contract with O'Reilly paying him \$25 million a year.

45. In response to the new reporting, Mr. O'Reilly made more false and defamatory statements when questioned about the numerous settlements he and Fox had entered into with women, stating "I never mistreated anyone." In fact, he mistreated Ms. Bernstein frequently and in front of numerous witnesses. Defendant's false statement disparaged and defamed Ms. Bernstein by portraying her as a liar.

46. In making the statement "I never mistreated anyone," defendant O'Reilly defamed plaintiffs Bernstein, Mackris and Diamond, members of the small group about which O'Reilly was clearly speaking. In fact, he mistreated both Ms. Mackris and Ms. Diamond and he is well aware of the irrefutable evidence of his harassment, abuse and mistreatment which caused him to settle their legal claims. Defendant's false statement defamed plaintiffs Mackris and Diamond by portraying them as liars, political operatives, and extortionists.

47. In October of 2017, O'Reilly added that the claims against him were "politically and financially motivated." He also stated that he had "resolved matters privately because he wanted to protect his children from the publicity." These false statements portrayed plaintiffs in a false light and disparaged their character, in fact calling them liars, political operatives and extortionists.

48. In fact, Mr. O'Reilly is lying and covering up the truth. He mistreated Ms. Bernstein. She was forced out of her job at Fox News and paid a settlement because of his mistreatment. She did go to HR and other company executives to complain about him several times. Fox News took no action to protect plaintiff from O'Reilly. There were many witnesses to her mistreatment. She was not politically or financially motivated to seek legal redress for O'Reilly's abuse.

49. In fact, Mr. O'Reilly is lying and covering up the truth. There is clear and objective evidence that he mistreated and harassed Andrea Mackris. Ms. Mackris was not politically or financially motivated to seek legal redress for O'Reilly's abuse and harassment.

50. In fact, Mr. O'Reilly is lying and covering up the truth. There is clear and objective evidence that he mistreated and harassed Rebecca Gomez Diamond. Ms. Diamond was not politically or financially motivated to seek legal redress for O'Reilly's abuse and harassment.

51. In October 2017, Mr. O'Reilly made several public appearances to promote a new book. During those public appearances, he stated that the complaints made against him at Fox News by women who received settlements (an obvious reference to the small group identified in the April 1, 2017 New York Times article) were "a political and financial hit job." This defamatory and disparaging statement is false. Plaintiffs settled their claims and left Fox News because of severe mistreatment, harassment and abuse by Mr. O'Reilly, as he knows.

52. Defendants Fox News and O'Reilly knew plaintiffs' settlements were among numerous examples of settlements entered in order to keep quiet O'Reilly's abuse of women

and the atmosphere at Fox which enabled such abuse. Despite this knowledge, defendant Fox News issued a statement designed to disparage and defame plaintiffs by falsely claiming that they never complained about O'Reilly's abuse.

53. On October 23, 2017, defendant O'Reilly stated on his podcast (hypocritically called "No Spin News") and/or posted on his website the following false, disparaging and defamatory statements referring specifically to the settlements reached at Fox: "Smears in this country now . . . allegations are facts. No doubt about that. Papers don't check anything out, they just print whatever allegations they want to print. And it's devastating, and that brings me to the main point of this story. The New York Times knows that I cannot specifically refute anything. In 20 years, 6 months at the Fox News Channel, I resolved three situations. Three I resolved. And I did that to protect my children from harm. And I would do anything, anything to protect my children from harm. So it was three in 20 years and 6 months that I resolved. Part of the resolution is nobody talks about it. Now, obviously that's been broken on the other side. But I can't break it. Because if I do, that opens everything all up again and it's insane."

54. On October 21, 2017, the New York Times reported that defendant O'Reilly was recorded on October 18, 2017 making the following false, disparaging and defamatory statement in a taped on-the-record interview with the New York Times: "I've been in the business for 43 years and I've never had a complaint filed by anyone at 12 different companies."

55. On October 23, 2017, defendant O'Reilly stated on his podcast and/or posted on his website the following false, disparaging and defamatory statement: "The bottom line is

that my enemies who want to silence me have made my life extremely difficult and have hurt me in the marketplace. Anybody who doesn't like me will believe all the stuff the smear merchants put out, but I'm interested in you, I'm interested in people who are fair-minded."

56. In the statements repeated in Paragraphs 53, 54 and 55 defendant O'Reilly was specifically referring to the plaintiffs (the small group identified in the April 1, 2017 New York Times article) in making these false and disparaging statements - they are the "situations" O'Reilly resolved in order to avoid a public trial where witnesses under oath would testify and evidence would be revealed about his abusive behavior. Plaintiffs' claims are falsely portrayed by defendant O'Reilly as based on lies which are part of a conspiracy designed to "smear" him and "hurt him in the marketplace."

57. These statements were designed to disparage plaintiffs by falsely stating that plaintiffs never complained about O'Reilly's abuse, by claiming that O'Reilly did nothing wrong, by claiming that plaintiffs are "smearing" him in order "to silence" him, and by claiming that plaintiffs violated their Settlement Agreements.

58. On October 23, 2017 defendant O'Reilly continued to spin false stories on his podcast and/or his website, falsely portraying himself as a victim, a truth teller, and an heroic father (while he is none of those things), by stating: "You know, am I mad at God? Yeah, I'm mad at him. I wish I had more protection." He went on to give advice which he has obviously and repeatedly ignored: "Never give up telling the truth. Never give up protecting your family..... I'm going to go down fighting and I'm going to go down telling the truth."

59. On or about December 14, 2017, in an interview on SKY News in London, Fox News CEO Rupert Murdoch stated that the whole raft of sexual harassment claims at



Fox were “nonsense.” He admitted “a problem” with “our chief executive” (Roger Ailes), falsely stating that they were “isolated incidents” and falsely stating that Ailes was “out of the place in hours - well three or four days and there’s been nothing else since then.” Murdoch further stated: “Now of course . . . but that was largely political because we are conservative. Of course, all the liberals are going down the drain. And NBC is in deep trouble. CBS - their stars . . . There are really bad cases that people should be moved aside and there are other which might’ve been a bit of flirting.” In making these statements on behalf of Fox News, Murdoch disparaged and defamed the plaintiffs. Roger Ailes was not the only harasser at Fox News. Bill O’Reilly harassed, abused or mistreated the three plaintiffs. Murdoch knew that the plaintiffs had valid claims and significant evidence when he disparaged and defamed them. Their claims were never “nonsense” or “flirting” or because Fox News is “conservative.” Murdoch, as CEO of Fox News, speaks on behalf of defendant Fox News as an authorized spokesperson and binds defendant Fox News with his statements.

60. By disparaging plaintiff Bernstein, defendants Fox News and O’Reilly breached the contract they entered with plaintiff Bernstein in 2002.

61. By making statements other than the statement agreed-upon, defendants Fox News and O’Reilly breached the contract they entered with plaintiff in 2002.

62. As a direct and proximate result of the aforesaid breaches of contract, plaintiff Bernstein has suffered and will continue to suffer damages to her reputation, severe emotional distress, physical sickness, and loss of income.

63. Defendants O’Reilly and Fox are jointly and severally liable for the breach of contract.



**COUNT TWO**

**(DEFAMATION AS TO ALL THREE PLAINTIFFS)**

64. Plaintiffs repeat and incorporate the allegations set forth above as if fully set forth herein.

65. Defendants Fox News and O'Reilly willfully, recklessly and maliciously published the aforesaid statements of and concerning the three plaintiffs (members of a small group clearly identified in the April 1, 2017 New York Times article).

66. Defendants Fox News and O'Reilly negligently published the aforesaid statements of and concerning the three plaintiffs (members of a small group clearly identified in the April 1, 2017 New York Times article).

67. The aforesaid statements falsely portrayed the plaintiffs as extortionate, politically-motivated liars who were never mistreated and who have wrongfully and willfully harmed Mr. O'Reilly and his children.

68. The aforesaid statements are defamatory because they expose plaintiffs to public contempt, ridicule, aversion and/or disgrace.

69. Defendants' defamatory statements are not protected by any privilege and are defamatory *per se*.

70. Plaintiffs are not public figures.

71. As a direct and proximate result of the aforesaid defamation, plaintiffs have suffered and will continue to suffer damages to their reputations, severe emotional distress, physical sickness, special damages and loss of income.

72. Defendants O'Reilly and Fox News are jointly and severally liable for the defamation.

**COUNT THREE**

**(BREACH OF COVENANT OF GOOD FAITH AND FAIR  
DEALING BY DEFENDANTS AS TO PLAINTIFF BERNSTEIN)**

73. Plaintiff Bernstein repeats and incorporates the allegations set forth above as if fully set forth herein.

74. By and through the actions described above, defendants breached the implied covenant of good faith and fair dealing embodied by law in the aforesaid Settlement Agreement.

75. As a direct and proximate result of the aforesaid breach of the covenant of good faith and fair dealing, plaintiff Bernstein has suffered and will continue to suffer damages to her reputation, severe emotional distress, physical sickness, and loss of income.

76. Defendants O'Reilly and Fox are jointly and severally liable for the breach of contract.

**COUNT FOUR**

**(TORTIOUS INTERFERENCE BY O'REILLY AS TO PLAINTIFF BERNSTEIN)**

77. Plaintiff Bernstein repeats and incorporates the allegations set forth above as if fully set forth herein.

78. By and through the actions described above, defendant O'Reilly tortiously interfered with the Agreement between Fox News and plaintiff.

79. As a direct and proximate result of the aforesaid tortious interference, plaintiff Bernstein has suffered and will continue to suffer damages to her reputation, severe emotional distress, physical sickness, and loss of income.

**WHEREFORE**, defendants are jointly and severally liable to the plaintiffs for:

- (a) All damages recoverable for all causes of action released in the contract materially breached by defendants;
- (b) reputational damages;
- (c) economic damages;
- (d) damages for emotional harm and stress;
- (e) punitive damages;
- (f) attorneys' fees and costs of suit; and
- (g) Such other relief as the Court may deem equitable and just including special damages.

**DEMAND FOR JURY TRIAL**

Plaintiffs demand a trial by jury in this action on all claims that are triable by a jury.

**SMITH MULLIN, P.C.**

BY: \_\_\_\_\_

NEIL MULLIN

NANCY ERIKA SMITH (to be  
admitted *pro hac vice*)

240 Claremont Avenue

Montclair, New Jersey 07042

(973) 783-7607; fax: (973) 783-9894

420 Lexington Avenue, Suite 300

New York, New York 10170

(212) 297-6134; fax: (917) 677-3697

(nmullin@smithmullin.com)

(nsmith@smithmullin.com)

Dated: December 20, 2017